



NATIVE HAWAIIAN LEGAL CORPORATION

Serving Hawai'i since 1974

1164 Bishop Street, Suite 1205 • Honolulu, Hawai'i 96813 • Phone (808) 521-2302 • Fax (808) 537-4268

April 6, 2006

Assistant Attorney General
Environment and Natural Resources Division
P. O. Box 7611
U. S. Department of Justice
Washington, D.C. 20044-7611

RE: Consent Decree filed in United States v. James H. Pfleuger, et al., D.J. Ref. No. 90-5-07871

Counsel:

The Native Hawaiian Legal Corporation (“NHLC”) represents Carlos and Makali’i Andrade in a lawsuit pending in the Fifth Circuit Court for the State of Hawai‘i entitled Pila‘a 400, LLC v. Andrade, Civil No. 04-1-0099. The case involves portions of the Pila‘a 400 property and two kuleana identified as Tax Map Key 5-1-00-004-025(4) and Tax Map Key 5-1-00-004-019(4) bounded thereby. The Andrade’s have ownership interests in both kuleana which entitle them to reasonable access through the Pila‘a 400 property as well as other constitutionally protected traditional and customary native Hawaiian rights for subsistence, religious and cultural purposes in and around this property.

NHLC and the Andrades have reviewed the remediation plans designed to address specific issues raised by the above-referenced case. Our review of these plans indicates that certain of the work required by these plans will occur on and around the Andrade kuleana identified as Tax Map Key 5-1-00-004-019(4) (“Waterfall Kuleana”). The tree plantings and other remediation work as described will definitely adversely affect the Andrades’ access rights to the Waterfall Kuleana specifically and to the surrounding area in general where the Andrades’ enjoy constitutional protection for their exercise of traditional and customary native Hawaiian rights.

Our clients were not a party to United State v. James H. Pfleuger, et al. and were not consulted during the preparation and finalization of the remediation plans. Our review of these plans also reveals that certain remediation work will occur directly on and in the Waterfall Kuleana. Prior to this review, NHLC nor the Andrades were aware of the impact these plans will have upon the Andrades’ interests and rights in this kuleana. Similarly, they did not give and have not, to date, given permission to anyone to proceed with such work. 90-5-07871

Past and current interaction between Mr. James Pfleuger and the Andrades with respect to the Pila‘a 400 property and the Andrades’ kuleana confirms that Mr. Pfleuger, Pila‘a 400, LLC,

Services made possible with major funding from the Office of Hawaiian Affairs.

RE: Pila`a 400 and Andrade Kuleana
April 6, 2006
Page 2 of 2

its employees, agents and/or representatives have purposefully used and will continue to use certain aspects of these remediation plans to interfere with and/or deny the Andrades' access to the Waterfall Kuleana specifically and to the area generally.

Our discussions with counsel for Plaintiffs confirms that the impact resulting from the remediation work on the Andrade's Waterfall Kuleana and on their access, property and native tenant rights was an oversight. Paragraph 79 of Section XII of the Consent Decree was added to attempt to address our concerns.

Although my clients and I accept and appreciate these attempts to mitigate the impact on the Andrades' rights, the Native Hawaiian Legal Corporation must nonetheless advise you and all parties to the consent decree that no party or representative of any party to this consent decree has permission to enter onto the Waterfall Kuleana, to otherwise commence any work thereon pursuant to the remediation plans or to block or impede access to the Waterfall Kuleana. Thank you for this opportunity to provide comment. Should you wish to discuss this matter please contact me at (808) 521-2302 or email me at mohaia@nhlchi.org.

Sincerely,



Moses K. N. Haia III

cc: Carlos & Makali`i Andrade
Mark R. Zenger, Esq.
Wesley H. H. Ching, Esq.
David L. Henkin, Esq.
Laurie Kermish, Esq.
Christiane Nakae-Tresler, Esq.
Kathleen Ho, Esq.